

(3) This paragraph (b) will remain effective in a State with an approved State regulatory program until the State adopts, and OSM approves, under Part 732 of this chapter, provisions consistent with §§ 817.41(j) and 817.121(c)(2) of this chapter. After these provisions are approved, this paragraph will remain effective only for violations of §§ 817.41(j) and 817.121(c)(2) that are not regulated by the State regulatory authority.

[60 FR 16750, Mar. 31, 1995]

## PART 845—CIVIL PENALTIES

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AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100-202, and Pub. L. 100-446.

SOURCE: 47 FR 35640, Aug. 16, 1982, unless otherwise noted.

### § 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 518(f), which is covered in part 846.

[53 FR 3675, Feb. 8, 1988]

### § 845.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

### § 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

### § 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

### § 845.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and